

ATTACHMENT 2

Comments on First Draft of the San Bernardino County MS4 Permit (Order R8-2009-0036)

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
1	6	I.A	Unclear sentence: The MS4s fall into one or more of the following categories:... The MS4 categories as listed were established by USEPA.	The USEPA (or cite regulation) categorizes MS4s as follows:	
2			Unclear terms: Urban and storm water runoff from...	Establish and use consistent terms, suggest: Urban runoff and urban storm water runoff...	
3		I.B	Inconsistent terms for “urban runoff” and “storm water runoff”	Establish and use consistent terms, such as above	
4			<p>Incomplete terminology:</p> <p>This Order regulates the discharge of pollutants (as defined in Attachment 4, Glossary) in storm water and urban runoff from anthropogenic (generated from non-agricultural human activities) sources from the MS4s that are under the jurisdiction of and/or maintenance responsibility or approval authority of the Permittees. Urban and storm water runoff includes those discharges from residential, commercial, industrial and construction areas within the permitted area and excludes discharges from feedlots, dairies, and farms.</p>	<p>This Order regulates the discharge of pollutants...in urban storm water and urban runoff from anthropogenic (generated from non-agricultural human activities) sources from the MS4s that are either under the jurisdiction of the Permittees, and/or where Permittees have MS4 maintenance responsibility, or have authority to approve modifications of the MS4s of the Permittees. Urban runoff and urban storm water runoff includes those discharges from residential, commercial, industrial and construction areas within the permitted area and excludes discharges from feedlots, dairies, and farms or other agricultural activities. The Permittees understand that agricultural activities are not regulated under the NPDES, but are under the jurisdiction of the Regional Board.</p>	

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
5			This finding conflicts with requirements in Sections III.A.2.c, VII.F, and XI.A.5: “The Permittees lack legal jurisdiction over storm water discharges into their systems from State and federal facilities, e.g., schools and hospitals, utilities and special districts, Native American tribal lands, wastewater management agencies and other point and non-point source discharges otherwise permitted by the Regional Board. The Regional Board recognizes that <i>the Permittees should not be held responsible for such facilities and/or discharges.</i> ”	Revise related text in Sections III.A.2.c, VII.F, and XI.A.5 to be consistent with this statement.	
6		Footnote 1	The footnote should refer the reader to the MS4 definition in the Glossary and not to create a different but similar definition.	Revise footnote 5 to read “See Attachment 4-Glossary, for definition of MS4.”	
7	7	I.D	Sentence is redundant with I.B: “The Permittees have jurisdiction over and/or maintenance responsibility for storm water conveyance systems within the permitted area.”	Delete sentence.	
8	7	I.E	Inconsistent terminology: use of terms “Regional Board” and “Santa Ana Regional Board” in same paragraph. In Section II, the permit defined Regional Board to be the California Regional Water Quality Control Board, Santa Ana Region. Therefore, “Regional Board” should be used instead of “Santa Ana Regional Board.”	Revise with consistent terms. Change all “Santa Ana Regional Board” to “Regional Board.”	
9	7	II.A.1	Unclear terms: The discharge of storm water and urban runoff from the San Bernardino County areas	The discharge of urban storm water and urban runoff from the San Bernardino County areas within the	

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
			within the <i>Santa Ana Region</i> are...	Regional Board's jurisdiction are...	
10	7	II.A.2	Incomplete information: “The Permittees jointly submitted a Report of Waste Discharge (ROWD) on October 26, 2006 to renew their NPDES permit.” “...and the County and the incorporated cities will continue as the Co-Permittees.”	“The Permittees jointly submitted a Report of Waste Discharge (ROWD) on October 26, 2006 as application to renew their NPDES permit.” “...and the County and the 16 incorporated cities will continue as the Co-Permittees.”	
11		II.A.3	Unclear and unneeded text The permit renewal application consisted of the ROWD, proposed...”	“The ROWD proposed...”	
12	8	II.A.4	Incorrect term: The <i>fourth term permit</i> —previous text said it would be referred to as either “the Permit or the Order”	The Permit ...	
13	8	II.B.1	The SIP for the California Toxics Rule does not apply to stormwater.	Delete CTR reference.	
14	9	II.B.3	Inconsistent terms for urban runoff/urban storm water.	Revise with consistent terms.	
15	9	II.B.5	Unclear what the San Bernardino County Superior Court decision was or how it is relevant.	Provide clarification in text or as a footnote—what was the substance of the cited decision?	
16	10	II.D.6.c	Footnote 7 is inappropriate as an example for the inland Santa Ana River watershed area. The City of Santa Cruz is not demographically or economically comparable to SB County—does not provide support for the statement. Santa Cruz County: pop per household = 2.7 persons, median household income = \$54,000 (1999); SB County: pop per	Delete footnote No. 7.	

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
			household = 3.3, median household income = \$42,000 (1999).		
17	10	II.C.1	Typographic error	The Regional Board developed the requirements in this Order based on...and other available information and to be consistent...	
18		II.C.2	Inconsistent terms for urban runoff/urban storm water.	Revise with consistent terms.	
19	11	II.C.5	Unclear requirement: This Order requires...any TMDLs adopted by the Regional Board and approved by the State Board, Office of Administrative Law and the USEPA, and to incorporate any additional BMPs needed to meet water quality standards.	Clarify: 1) whether this applies only to fully approved TMDLs as of the date of the adoption of Order R8-2009-0036, or if also applies to TMDLs that may be approved during the permit term; and 2) whether the need to meet water quality standards is subject to the MEP compliance standard. Revise text as needed to clarify.	
20		II.D.E.1	Unclear and conflicting statement-- Conflicts with requirements in Sections III.A.2.c, VII.F, and XI.A.5): This Order regulates the discharge of pollutants... discharges specifically authorized under Section V of this Order, from areas under the jurisdiction of the Permittees.	Revise related text in Sections III.A.2.c, VII.F, and XI.A.5 to be consistent.	
21		II.D.E.1	Unnecessary/unclear term: "basin"	The quality of these discharges...activities, basin hydrology and geology,...	
22		II.D.E.2	Inaccurate term: "indicate," suggest replace with "identify."	Studies conducted by the USEPA... indicate-identify the following major sources of urban runoff...:	

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
23	12	II.E.3	Unclear sentence: The Permittees have developed project conditions of approval requiring coverage under the State's General Permits for new developments to be implemented at the time of grading or building permit issuance for construction sites on one acre or more and at the time of local permit issuance for industrial facilities.	The Permittees have developed project conditions of approval for projects requiring coverage under the State's General Permits for new developments to be implemented at the time of grading or building permit issuance for construction sites on one acre or more and at the time of local permit issuance for industrial facilities.	
24		II.E.4	Incomplete information: Currently there are two facilities located within San Bernardino County.	Text should identify these facilities if there are only two.	
25	13	II.E.7	Unclear wording: The discharge of urban runoff from an MS4 is a "discharge of pollutants from a point source" into waters of the U.S. as defined in the CWA.	The discharge of urban runoff from an MS4 is defined in the CWA as a "discharge of pollutants from a point source" into waters of the U.S.	
26		II.E.10	Problems with this finding: 1) the first sentence is general and has no basis other than a presumptive link—please cite references or delete; 2) this finding implies a causal link between SB County runoff and beach closings in OC—numerous studies (e.g. Stan Grant et al) have determined that there are multiple pathogen indicator sources—not all of which have been identified—and there are no objective source identification data to support the claim that SB County runoff was a source that contributed to the subject beach closings. It is speculation and should not be a finding of fact. The construction of this finding implicates the upper watershed by covertly associating these issues.	Restate this finding specific to Reach 3 of the SAR, or remove this finding. Cite specific, appropriate references to support.	
27		II.E.13	Nonspecific wording: Toxic substances (from	If released into the environment, t o xic	

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
			pesticides, petroleum products, metals, and industrial wastes) can cause acute and/or chronic toxicity, and can bioaccumulate in organisms to levels that may be harmful to human health.	substances (from including pesticides, petroleum products, metals, and industrial wastes) can cause acute and/or chronic toxicity, and can bioaccumulate in organisms to levels that may be harmful to human health.	
28		II.E.14	<p>Misleading statement: Nutrients (from fertilizer use, fire fighting chemicals, decaying plants, confined animal facilities, pets, and wildlife) can cause <i>excessive</i> algal blooms.</p> <p>Nutrients from decaying plants and “wildlife” (whatever this means) are naturally occurring and are in fact, necessary, for functioning ecosystems. Algal blooms and fish kills also occur naturally in some cases.</p>	Revise sentence to clarify what “excessive” means. Clarify the natural from the anthropogenic.	
29	14	II.E.15	Nurdles do not produce entanglement and entrapment, but are ingested.	Clarify the impacts of nurdles	
30		II.E.15	Typographic errors: ...expose those animals to pollutant concentration that are Orders of magnitude higher than the...	...expose those animals to pollutant concentrations that are O orders of magnitude higher than the...	
31		II.E.17	Typographic errors: the word “order” is incorrectly capitalized twice in this paragraph.	Change the letter case as needed.	
32	15	II.F.1	Typographic error: Section 305(b) of the CWA requires each of the regional boards to routinely monitor and assess the quality of waters of <i>the</i> region.	Change “the” to “its” in the subject sentence.	

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
33	16	II.F.4	Vague requirement: For 303(d) listed waterbodies without a TMDL, the Permittees are <i>required to provide special protections through implementation of specific tasks that are deemed necessary</i> , including any additional monitoring and participation in the development and implementation of TMDLs.	Define the term “special protections” and explain what “implementation of specific tasks that are deemed necessary” means in the text, or delete these phrases.	
34	17	Table 3	Table does not show proposed 303 (d) delistings.	Revise the table to show proposed delistings, such as sedimentation/siltation in Big Bear Lake, and metals in Grout and Knickerbocker Creeks.	
35	18	II.F.5.d	Per the red text below, we do not support the idea of incorporating pre-mercury TMDL implementation into the WAP. In the case of mercury the most probable source is not controllable by the Permittees. City and County resources should not be used on this issue. Pending adoption of the Big Bear Lake Mercury TMDL, this Order <i>requires the stakeholders to participate in the preparation and implementation of a Watershed Action Plan that includes control measures to minimize the impact of urbanization on water quality and hydrologic regime.</i>	Delete this requirement in its entirety.	
36	19	II.F.6.A	Factual clarification: It is engineered...through the Big Bear Village area to carry 100-year <i>flows</i> , but is natural within the upper boundaries of the City and the Forest Service area.	It is engineered...through the Big Bear Village area to carry <i>flows from the</i> 100-year flows-frequency flood event , but is a natural <i>channel</i> within the upper boundaries of the City and the Forest Service area.	
36		II.F.6.B	Basin Plan term consistency: The Basin Plan designates municipal and domestic water supply	The Basin Plan designates municipal and domestic water supply (MUN), water contact recreation (REC1)	

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
			(MUN), water contact recreation (REC1) and non-water contact recreation (REC2) as beneficial uses of Knickerbocker Creek.	and non-water contact non-contact water recreation (REC2) as beneficial uses of Knickerbocker Creek.	
38	21	II.F.8	Problematic requirement: The waste load allocations apply to Middle Santa Ana River Watershed Urban Dischargers as a group. This statement is unclear and not part of the approved TMDL.	Suggest deleting this sentence—it adds no value and increases confusion.	
39		II.F.9	The paragraph does not state that agricultural operators also have requirements.	Revise paragraph to mention agricultural operators as appropriate.	
40		Table 4	Incorrect entry for USDA Forest Service—table shows as two entities. Incorrect entry for Chino Basin Watermaster Agricultural Pool.	Revise table to show one entity that is the USDA, Forest Service. Revise table to read Chino Basin Watermaster Agricultural Pool.	
41	22	II.F.11.c	Typographic error: Monitoring “program” should read “plan.”	Revise text to read “ monitoring plan ” program	
42		II.F.12	Text clarification: These and other recommendations of the SWQSTF for revisions to recreational beneficial use designations will be considered through the Basin Planning process. When and if the Basin Plan is amended to incorporate new beneficial use designations and/or bacterial standards, the MSAR TMDLs will be revised, as appropriate.	These and other recommendations of the SWQSTF for revisions to recreational beneficial use definitions and designations will be considered through the Basin Planning process. When and if the Basin Plan is amended to incorporate new beneficial use definitions , designations and/or bacterial standards, the MSAR TMDLs will be revised, as appropriate.	

Comment Number	Page(s)	Section(s)	Comment	Suggested Change
43			Text clarification—in appropriate term and TMDL reference: There were insufficient watershed and in-lake nutrient data to <i>allow</i> development of TMDLs...This Order requires the Permittees to implement the tasks identified in the implementation plan for the Big Bear Lake Nutrient TMDL.	There were insufficient watershed and in-lake nutrient data to allow-support development of TMDLs...This Order requires the Permittees to implement the tasks identified in the implementation plan for the Big Bear Lake Nutrient TMDL <i>for Dry Hydrological Conditions</i> . Suggest designating an abbreviation for the TMDL.
44		II.F.14.a	Incomplete TMDL reference: The Big Bear Lake Nutrient TMDL includes an urban WLA for total phosphorus for dry hydrologic conditions. Unsupported causal statement: Phosphorus is generally considered as the controlling nutrient causing impairment in Big Bear Lake.	The Big Bear Lake Nutrient TMDL <i>for Dry Hydrological Conditions</i> includes an urban WLA for total phosphorus for dry hydrologic conditions. The inference that phosphorus is the controlling nutrient requires supporting evidence or should be deleted.
45		II.F.14.c	Unsupported presumption: These response numeric targets provide a method to track improvements in water quality <i>resulting from reductions in phosphorus loading</i> . The response targets may indicate water quality improvements, but cannot be causally linked to phosphorous loading. Water quality improvements could result from other factors, such as aquatic vegetation management and lake water levels.	Delete this presumptive statement.
46		II.F.14.e	Agency abbreviation: This Order requires the County, <i>County Flood Control District</i> Unclear requirement: and the City of Big Bear	This Order requires the County, County-Flood Control-District <i>SBCFCD</i> , and the City of Big Bear Lake (MS4 Permittees in the watershed) to

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
			Lake (MS4 Permittees in the watershed) to comply with the urban WLA and to monitor <i>for compliance</i> . The term “for compliance” is unclear—suggest clear requirement statement.	comply with the urban WLA and to monitor flows from the MS4 system to the lake.	
47		II.F.14.f	Clarify TMDL title: “nutrient TMDL” should be “Big Bear Lake Nutrient TMDL for Dry Hydrological Conditions” or designated abbreviation.	Use abbreviation or correct TMDL name.	
48		II.F.14.g and following	Clarify TMDL title: “TMDL for Dry Hydrological Conditions” should be “Big Bear Lake Nutrient TMDL for Dry Hydrological Conditions” or designated abbreviation.	Use abbreviation or correct TMDL name—throughout the permit.	
49		II.F.14.h and following	Typographical error: the correct term is “Task Force.”	Revise the term as needed throughout the permit.	
50		II.F.14.i	Task Force Title correction: On May 4, 2009, the Big Bear Lake Nutrient Taskforce —the proper title from the approved cooperative agreement is the “Big Bear TMDL Task Force.” Corrected document title: submitted a revised monitoring plan Text clarification: ...are designed to determine the sources of phosphorus; develop TMDLs applicable to other hydrologic conditions; and evaluate compliance with numeric targets specified in the TMDLs.	On May 4, 2009, the Big Bear TMDL Task Force submitted a revised watershed monitoring plan.are designed to determine the sources of phosphorus; support the development of TMDLs applicable to other hydrologic conditions; and evaluate compliance with numeric targets specified in the TMDLs.	
51	24	II.F.15	Text clarification: The Permittees are required to	The Permittees are required to identify and control	

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
			identify and control other sources of bacteria, nutrients and other pollutants.	urban sources of bacteria, nutrients and other pollutants within their jurisdictions, consistent with the MEP standard.	
52		II.G.3	Unclear text: The...These changes are collectively termed hydromodification. For the permitted area, <i>hydromodification could especially impact those natural streams in the mountains and in lightly urbanized or undeveloped portions</i> of the watershed. Natural streams in the mountain areas are least likely to have adjacent urbanization, and undeveloped areas will not have urban impacts. Statement not related to hydromodification: <i>These areas are also sources of high quality water in the region.</i>	The...These changes are collectively termed hydromodification. For the permitted area, the remaining natural streams in the mountains and in lightly urbanized or undeveloped portions of the watershed are most likely to experience adverse impacts due to new development or significant redevelopment projects. These areas are also sources of high quality water in the region.	
53	30	II.L.3	Statement inconsistent with TMDL Implementation Plans—effluent limits are not appropriate. <i>This Order includes effluent limits for those constituents for which the Regional Board has already established TMDLs/WLAs.</i>	Delete sentence: This Order includes effluent limits for those constituents for which the Regional Board has already established TMDLs/WLAs.	
54		II.L.3	Use abbreviation for MEP		
55		II.L.3	Inappropriate term: “effluent limits”: <i>The WLAs are expressed as effluent limits.</i>	Delete sentence: The WLAs are expressed as effluent limits.	
56	44	V.D.1.a	City of Upland not listed.	Add Upland to TMDL dischargers list.	
57		Footnote 44	What is the purpose of the footnote? Since the TMDL compliance date is outside the term of this permit, monitoring and reporting pollution reduction at waste load allocation monitoring locations in		

Comment Number	Page(s)	Section(s)	Comment	Suggested Change	
			conjunction with the iterative BMP approach is appropriate to demonstrate adequate program effectiveness and progress towards compliance with the TMDL/WLA by the compliance date.		
58	45	V.D.1.d.ii	Date of MSWMP revision should link to SWSTF efforts.	February 15 date should be revised to coordinate with the SWQSTF Basin Plan Amendment schedule.	
59	46	V.D.1.iv	This section adds new requirements to the approved TMDL Implementation Plan.	Delete this section in its entirety	
60	46-47	V.D.2	Inconsistent names and abbreviations: San Bernardino County Flood Control District = SBCFCD; Big Bear Lake TMDL Task Force; WLAs.		
61		V.D.2.f	Incomplete discharger list: This Order requires the <i>County and the City of Big Bear Lake</i> to Unclear requirement: <i>monitor continued compliance with the WLA</i> so as not to exceed this level of loading into the Lake.	This Order requires the dischargers to monitor continued compliance with the WLA so as not to exceed this level of loading into the Lake.	